

BEFORE THE -  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
EDWARD DEAN, JR., JOHN L. )  
SCOTT AND CITY OF )  
BELLEVUE, )  
Appellants, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent )

SHB No. 79-16

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, an appeal from a denial of a shoreline variance permit by the Department of Ecology (DOE), came before the Shorelines Hearings Board, Nat W. Washington, Chairman, Chris Smith, David Akana, Rodney Kerslake, Richard A. O'Neal and David W Jamison, members, in Bellevue, Washington, on September 27, 1979. Nancy E. Curington presided.

Appellants Dean and Scott were represented by John T. Rassier and Richard U. Chapin, attorneys. Appellant City of Bellevue was represented by Lee Kraft, City Attorney. Respondent DOE was

1 represented by Laura E. Eckert, Assistant Attorney General.

2 Having heard the testimony, having examined the exhibits, having  
3 considered the parties' contentions and arguments, and being fully  
4 advised, the Shorelines Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 This matter arises from the denial of a permit, issued to  
8 appellants Dean and Scott for a shoreline variance, by the State of  
9 Washington, DOE, for construction of a joint pier and covered  
10 moorage 80 feet long on Meydenbauer Bay in Lake Washington, a  
11 shoreline of statewide significance in Bellevue, Washington. The  
12 City of Bellevue (hereinafter referred to as "City") approved the  
13 application for the variance; DOE, upon review of the variance  
14 permit, denied the permit; such denial is the subject matter of this  
15 appeal.

16 II

17 Appellants Dean and Scott own adjoining residential properties  
18 on Meydenbauer Bay. The site slopes sharply to the shoreline; the  
19 water is four to five feet deep for the first 20 or 25 feet from  
20 shore, then the lake bottom sharply drops off. The slope of the  
21 lake bottom in most other areas of the Bay is generally less steep.  
22 Appellant Dean presently has a pier, in good condition, extending 54  
23 feet into the bay; at the end of the pier, the water depth is  
24 sixteen feet. Appellant currently roors a 44 foot boat which draws  
25 four to five feet of water, and requires an additional five feet of  
26 depth to

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 protect the hull during high wave conditions. At the time Dean  
2 purchased his property, he owned a 22 foot sailboat which required  
3 approximately the same depth of water; the existing moorage was  
4 satisfactory for the sailboat. Unlike most other properties in the  
5 bay, this location is subject to the full force of the southwesterly  
6 winds.

### 7 III

8 Approximately half of the piers in Meydenbauer Bay extend 80  
9 feet or more into the water. Near appellant's property, a  
10 commercial moorage facility protrudes approximately 350 feet into  
11 the Bay. The immediately neighboring piers extend 50-55 feet into  
12 the water. The legal line of navigability is 350-400 feet from the  
13 shoreline.

### 14 IV

15 Appellants Dean and Scott propose to remove the existing pier  
16 and construct a pier 80 feet long and 43 feet wide centering on  
17 their joint property line. At the end of the pier, the water depth  
18 would be 25 feet. Part of the pier would be covered by a 14 foot  
19 high open cover, where Dean would moor a 53 foot vessel which he  
20 recently purchased. The sides of the covered portion would be open  
21 except for supporting posts. Dean considers that the requested 80  
22 foot pier is required to accommodate the 53 foot vessel, which will  
23 draw 4-1/2 to 5 feet and require additional depth to protect the  
24 hull when the water level of Lake Washington is lowered during the  
25 winter and storms cause vigorous wave action.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

The shoreline variance application at issue herein is tested for consistency with the City's Shoreline Master Program (SMP) (Section 20.30.125) and the provisions of the Shoreline Management Act (SMA). RCW 90.58.140. In order for the variance permit issued by the City to be approved by the DOE, the DOE regulations, WAC 173-14-150, must be met. Section 20.30.175.

II

The City's Shoreline Master Program amended in 1978, restricts private piers in length to "that distance necessary to obtain ten (10) feet water depth at mean low water. Maximum pier length shall not exceed one hundred fifty (150) feet." Section 18.47.321(I)(7). Because the end of the proposed pier would lie in water depth of more than ten feet at mean low water, a depth variance is required. The length restriction would not be violated by the proposed pier, since it would be less than 150 feet long.<sup>1</sup>

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1. If the City intended to allow moorage of a vessel requiring 10 feet along its length, then the SMP could provide for such.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

III

In order for the Board to find for the appellants, it must find that the variance request meets all of the very strict specific requirements of WAC 173-14-150 which provides in part as follows:

(3) Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the department pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes a reasonable permitted use of the property.

(b) That the hardship described in WAC 173-14-150(3)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.

(e) That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

(f) That the public interest will suffer no substantial detrimental effect. (Emphasis supplied).

Before a variance can be granted, an initial threshold determination must be made. Unless the applicant can first cross

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 the (3)(a) threshold by affirmatively establishing that the master  
2 program precludes a reasonable permitted use of the property, the  
3 variance application must be denied, and there is no need to  
4 consider the additional requirements set forth in (3)(b) through  
5 (3)(f).

6 The determination as to what constitutes "a reasonable permitted  
7 use of the property" depends on the particular facts relating to  
8 each individual variance application.

9 The evidence in this matter shows that the appellants' property  
10 is waterfront property and that a pier is a permitted use; thus the  
11 applicants successfully took the first step toward crossing the  
12 threshold. To successfully take the necessary second step the  
13 applicants faced the task of affirmatively demonstrating that the  
14 existing master program precludes a pier which provides for a  
15 reasonable use of the property. This they failed to do.

16 The evidence clearly establishes that prior to the time the  
17 appellant Dean acquired his property that the existing 54' pier had  
18 served the property for a substantial period of time. For a time  
19 after the appellant Dean acquired the property, the existing pier  
20 adequately moored a 22 foot sailboat and is presently serving as  
21 moorage for Dean's 44 foot power boat.

22 A further indication that a 54 pier provides for a reasonable  
23 moorage use in this area of Meydenbauer Bay is the fact that the two  
24 immediately neighboring piers are of a length of 50 feet and 55  
25 feet. There was no showing that wind conditions and lake bottom

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1 conditions as to depth and topography at these two piers are  
2 materially different than conditions at Dean's dock. Rather than  
3 establishing that the master program precludes a reasonable  
4 permitted use of Dean's property, the evidence affirmatively  
5 establishes that it does allow a reasonable pre-existing boating use  
6 of the property.

#### 7 IV

8 In presenting their case, the appellants stress DOE's approval  
9 of a depth variance allowing a 100 foot pier to obtain a depth of  
10 about 18 feet in front of the property of Michael and Diane Graves  
11 at Pickle Point across Meydenbauer Bay from appellants' property.  
12 (Exhibit A-8). Even had the appellants shown that DOE erred in  
13 approving the Graves' variance, this Board would have to properly  
14 apply WAC 173-14-150 in determining the validity of the Dean-Scott  
15 variance. However, both the Graves' and the Dean-Scott depth  
16 variances granted by the City might be cited as an indication that  
17 the City should seriously consider modifying its master plan depth  
18 limitation.

#### 19 V

20 The Department of Ecology properly denied the shoreline variance  
21 permit.

#### 22 VI

23 Any Finding of Fact which should be deemed a Conclusion of Law  
24 is hereby adopted as such.

25 From these Conclusions, the Board enters this

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

ORDER

The denial of the shoreline variance permit by Washington State Department of Ecology is affirmed.

DATED this 30<sup>th</sup> day of November, 1979.

SHORELINES HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

Chris Smith  
CHRIS SMITH, Member

David Akana  
DAVID AKANA, Member

Rodney Kerslake  
RODNEY KERSLAKE, Member

Richard A. O'Neal  
RICHARD A. O'NEAL, Member

David W. Jamison  
DAVID W JAMISON, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER